



12-11-06

[10191/3619]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Andreas KYNAST et al.
Serial No. : 10/517,514
Filed : June 21, 2005
For : METHOD FOR OPERATING DRIVER INFORMATION SYSTEMS AND DEVICE FOR CARRYING OUT THE METHOD
Examiner : Richard M. Camby
Art Unit : 3661

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. 1.181(a) TO WITHDRAW ERRONEOUS HOLDING OF ABANDONMENT DUE TO PATENT OFFICE ERROR

SIR:

Applicants respectfully petition the Commissioner pursuant to 37 C.F.R. § 1.181(a) to withdraw the erroneous holding of abandonment in the above-captioned application.

Applicants received a "Notice of Abandonment" dated November 27, 2006, which states that the above-captioned "application is abandoned in view of Applicant's failure to timely file a proper reply to the Office letter mailed on 15 May 2006." This statement is in error.

In fact, Applicants timely filed an Amendment (to the May 15, 2006 Office Action) on November 13, 2006, together with a certificate of mailing and the necessary extension fees, so that response was properly and timely filed. Applicants submit herewith a copy of the Amendment mailed and filed on November 13, 2006, a copy of the Amendment Transmittal (authorizing payment of the three-month extension fee) that accompanied the Amendment, and a copy of a return postcard that accompanied the Amendment and that has been date stamped November 17, 2006 by the United States Patent and Trademark Office.

Both the Amendment and the Amendment Transmittal included a certificate of mailing in compliance with 37 C.F.R. § 1.8, which certifies that the Amendment and its Transmittal was deposited with the United States Postal Service with sufficient postage as
EXPRESS MAIL LABEL NO.: EV 839 765 580 US

U.S. Pat. App. Ser. No. 10/517,514
Attorney Docket No. 10191/3619
37 C.F.R. § 1.181 Petition To
Withdraw Erroneous Holding Of Abandonment

first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on November 13, 2006, so that the effective filing date was the mailing date of November 13, 2006. The Transmittal authorized charging of the three-month extension fee of (as well as any other fee required in connection with) the Amendment to Deposit Account No. 11-0600.

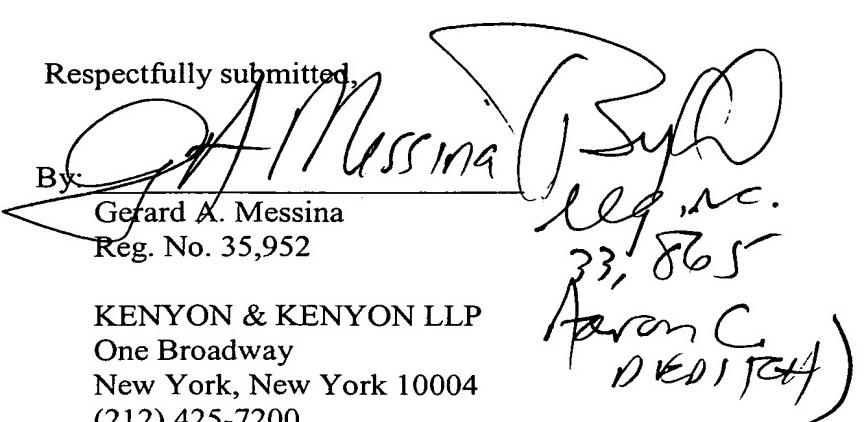
The U.S.P.T.O. date-stamped postcard -- which itemizes and properly identifies the Amendment and Transmittal that was mailed on November 13, 2006 -- is prima facie evidence of receipt by the United States Patent and Trademark Office of all items listed on the postcard for United States Application Serial No. 10/517,514 – namely, the Amendment and its Transmittal (and all necessary fees) mailed and filed on November 13, 2006 (as evidenced by the date stamped thereon by the United States Patent and Trademark Office).

Applicants therefore respectfully request that the enclosed copy of the Amendment mailed and filed on November 13, 2006 be entered in the present application, and Applicants respectfully petition the Commissioner under 37 C.F.R. § 1.181(a) to withdraw the erroneous holding of abandonment – which was in error since a response was timely filed and received by the U.S.P.T.O.

As this petition was necessitated by Patent Office error, no fee is believed to be required in connection with this petition under 37 C.F.R. § 1.181(a). However, the Commissioner is authorized to charge any fees that may be necessary in connection with this petition under 37 C.F.R. § 1.181(a) (or any other matter relating to the above-captioned application) to the deposit account of **Kenyon & Kenyon LLP, Deposit Account No. 11-0600.**

Date: 12/8/06

Respectfully submitted,

By: 
Gerard A. Messina
Reg. No. 35,952

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One Broadway
New York, New York 10004
(212) 425-7200
Customer Number 26646

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NY01 1282935 v1



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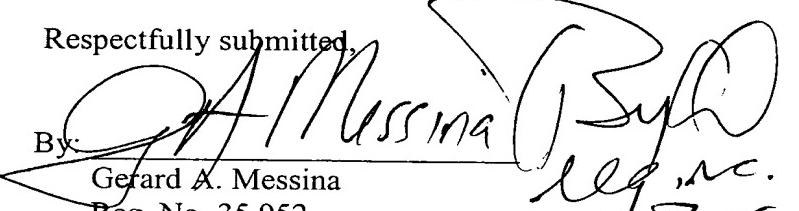
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Date: 12/8/06

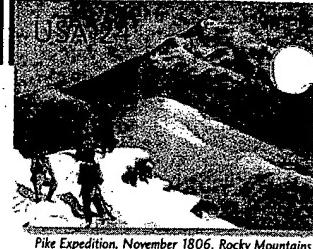
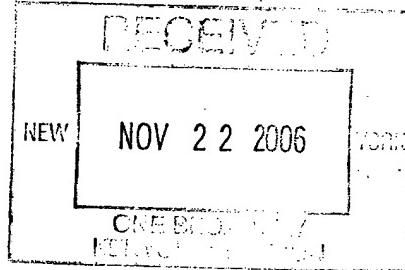
Respectfully submitted,
By: 
Gerard A. Messina
Reg. No. 35,952

(Signature of Gerard A. Messina)
leg. ac.
33,865
(Signature of Aaron C. D'Edio)

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NY01 1282935 v1



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New York, N.Y. 10004

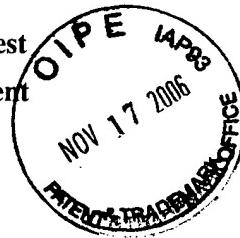
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Case No. 10191/3619 Atty. ACD
Ser. No. 10/517,514 Due Date

The Impressed Mail Room date stamp acknowledges receipt of the date indicated of:

- Application
- Amendment
- Assignment
- Notice of Appeal
- Prior Art Statement
- Appeal Brief
- Extension Request
- Priority Document
- Issue Fee
- Declaration
- Small Entity
- DEPOSIT ACCT. 11-0600



11/13/06



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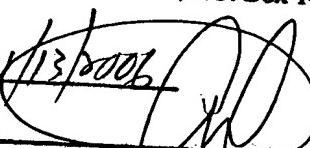
Group Art Unit : I hereby certify that this correspondence is being deposited with the 366 United States Postal Service with sufficient postage as first class mail

Confirmation No. : in an envelope addressed to:

Customer No. : 7078 Mail Stop AMENDMENT Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450
26646 on

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Date: 11/13/2006

Signature: 

AARON C. DEDITCH
(39,865)

TRANSMITTAL AND PETITION TO EXTEND

SIR:

Transmitted herewith for filing in the above-identified patent application is an Amendment.

Applicants request a three-month extension of time to extend the three-month response date from August 15, 2006 to November 15, 2006. The Commissioner is authorized to charge the three-month extension fee of \$1,020.00 (or to charge any additional fees and/or credit, as necessary) to Kenyon & Kenyon LLP, Deposit Account No. 11-0600. Two duplicate copies of this transmittal letter are enclosed for these purposes.

Respectfully submitted,

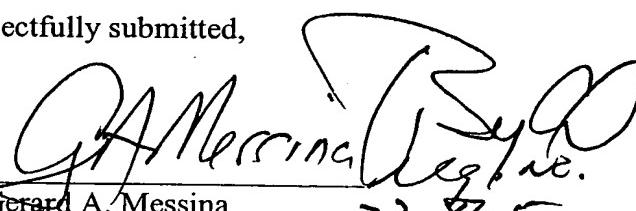
Dated: 11/13/2006

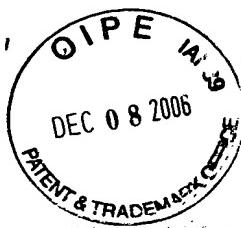
By:

Gerard A. Messina
(Reg. No. 35,952)

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Customer No. :

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

I hereby certify that this correspondence is being deposited with the
United States Postal Service with sufficient postage as first class mail
in an envelope addressed to:
2664 Mail Stop AMENDMENT
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Date: 11/13/2006

Signature:

AARON C. DEDITCH
(33,865)

AMENDMENT

SIR:

In response to the Office Action of May 15, 2006 (the three-month response date for which has been extended from August 15, 2006 to November 15, 2006 by the accompanying Transmittal and Petition to Extend), please reconsider the above-identified application based on the following.

Amendments to the Claims are reflected in the listing of the claims which begins on page 2 of this paper.

Remarks begin on page 5 of this paper.

Amendment to the Claims:

Without prejudice, this listing of the claims replaces all prior versions and listings of the claims in the present application:

Listing of Claims:

Claims 1 to 10. (Canceled).

11. (Currently Amended) A method for operating at least one information system for a driver in a motor vehicle, comprising:

obtaining vehicle operating data;

creating a driver profile with regard to information absorption capacity; and

outputting, as a function of the driver profile, selected information to the driver, wherein the information output to the driver is selected as a function of vehicle operating data, whereby the selected information is adapted to a driving situation.

12. (Previously Presented) The method as recited in Claim 11, wherein the selection of the information is made with respect to one of information type, information representation, and information density.

Claims 13 and 14. (Canceled).

15. (Currently Amended) The method as recited in Claim [[13]] 11, wherein physiological data including at least one of age, body size, weight, sight capability, and reaction time, are included in the driver profile.

16. (Currently Amended) The method as recited in Claim [[14]] 12, wherein physiological data including at least one of age, body size, weight, sight capability, and reaction time, are included in the driver profile.

17. (Currently Amended) The method as recited in Claim [[14]] 12, wherein the driver profile is automatically updated over an operating period on the basis of the vehicle operating data.

18. (Previously Presented) The method as recited in Claim 15, wherein the driver profile is automatically updated over an operating period on the basis of the vehicle operating data.

**U.S. Pat. Appl. Ser. No. 10/517,514
Attorney Docket No. 10191/3619
Reply to Office Action of May 15, 2006**

19. (Currently Amended) The method as recited in Claim [[13]] 11, wherein the information is selected on the basis of at least one of location data, time data, environmental data, and navigation data.

20. (Currently Amended) The method as recited in Claim [[14]] 12, wherein the information is selected on the basis of at least one of location data, time data, environmental data, and navigation data.

21. (Previously Presented) The method as recited in Claim 16, wherein the information is selected on the basis of at least one of location data, time data, environmental data, and navigation data.

22. (Previously Presented) The method as recited in Claim 17, wherein the information is selected on the basis of at least one of location data, time data, environmental data, and navigation data.

23. (Currently Amended) The method as recited in Claim [[13]] 11, wherein the information is selected on the basis of traffic data.

24. (Currently Amended) The method as recited in Claim [[14]] 12, wherein the information is selected on the basis of traffic data.

25. (Previously Presented) The method as recited in Claim 16, wherein the information is selected on the basis of traffic data.

26. (Currently Amended) The method as recited in Claim [[13]] 11, wherein the vehicle operating data is recorded by sensors.

27. (Currently Amended) The method as recited in Claim [[13]] 11, wherein a value for a driver state is determined from the vehicle operating data and the driver profile, and wherein the driver state value is stored in a context database that is connected to at least one assistance system, the at least one assistance system one of outputting and suppressing information as a function of the driver state.

28. (Previously Presented) The method as recited in Claim 16, wherein a value for a driver state is determined from the vehicle operating data and the driver profile, and wherein

**U.S. Pat. Appl. Ser. No. 10/517,514
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Reply to Office Action of May 15, 2006**

the driver state value is stored in a context database that is connected to at least one assistance system, the at least one assistance system one of outputting and suppressing information as a function of the driver state.

29. (Previously Presented) The method as recited in Claim 18, wherein a value for a driver state is determined from the vehicle operating data and the driver profile, and wherein the driver state value is stored in a context database that is connected to at least one assistance system, the at least one assistance system one of outputting and suppressing information as a function of the driver state.

30. (Previously Presented) A system for providing a driver of a motor vehicle with information, comprising:

- an evaluation device for evaluating vehicle operating data;
- a unit for determining a value of a driver state based on the vehicle operating data and a driver profile with regard to information absorption capacity; and
- at least one driver assistance unit for selectively outputting information depending on the value of the driver state.

REMARKS

With the cancellation of claims 13 and 14, claims 11, 12, and 15 to 30 are now pending.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Applicants thank the Examiner for acknowledging the claim for foreign priority and for indicating that all of the certified copies of the priority documents have been received.

Applicants thank the Examiner for considering the previously filed Information Disclosure Statement, 1449 paper, and cited references.

Claim 17 was objected to for asserted informalities. Claim 17 has been amended herein without prejudice to obviate the present objection. Withdrawal of the objection is therefore respectfully requested.

Claims 11 to 30 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,163,277 (the “Gehlot” reference).

It is noted that although the rejection heading includes claim 30 in the anticipation rejection, the Examiner has not addressed claim 30. Applicants request that the Examiner address claims 30 in the next Office communication.

Claims 13 and 14 have been canceled herein without prejudice, rendering moot the present rejection with respect to these claims.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily*

U.S. Pat. Appl. Ser. No. 10/517,514
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flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 11, which has been amended herein without prejudice to include the subject matter of canceled claim 13, provides for creating a driver profile with regard to information absorption capacity and outputting, as a function of the driver profile, selected information to the driver. Claim 30 provides for a unit for determining a value of a driver state based on a driver profile with regard to information absorption capacity.

The Office Action asserts that figure 2, input 54 of the “Gehlot” reference discloses the driver profile of claim 11 (and 30). While the Office Action has addressed the feature of a driver profile, it has conveniently ignores the words in claims 11 and 30 that qualify the driver profile of the claims as one that is “with regard to information absorption capacity.” Element 54 of figure 2 refers to a driver profile, but does not state what the properties of the driver profile are. However, any review of the “Gehlot” reference makes plain that the driver profile of element 54 is a driver speeding pattern (such as how often and for what stretches of time the driver speeds), in particular, one that may be used to determine the recklessness of the driver; the driver profile of element 54 is not one that is with regard to an information absorption capacity.

Thus, the “Gehlot” reference does not identically disclose (or even suggest) each feature of either of claims 11 (or its dependent claims, *i.e.*, claims 12 and 15 to 29) and 30. It is therefore respectfully submitted that the “Gehlot” reference does not anticipate any of claims 11, 12, and 15 to 30.

Withdrawal of the anticipation rejections of claims 11, 12, and 15 to 30 is therefore respectfully requested.

Accordingly, all of pending claims 11, 12, and 15 to 30 are allowable.

U.S. Pat. Appl. Ser. No. 10/517,514
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Conclusion

In view of the foregoing, it is respectfully submitted that all of claims 11, 12, and 15 to 30 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

Dated: 11/13/2006

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